IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO : 30362 of 1997

Dated: 13.02.2007

Between:
M/s Banjara Cements Limited, Bhogasamudram, Tadpatri, Registered Office 8-2-472/A, Banjara Hills, Hyderabad, represented by its Managing Director M.M.Reddy, S/o M.Ramalinga Reddy, 46 years, resident of Hyderabad.

..... PETITIONER

AND

1.A.P. State Electricity Board represented by its Member Secretary, Vidyuth Soudha, Somajiguda, Hyderabad.
2.Chief Engineer (Electrical), APSEB, Cuddapah Zone, Cuddapah.
3.Superintending Engineer (Assessments) APSEB, Cuddapah.
4.Assistant Divisional Engineer (Operations), APSEB, Tadpatri, Anantapur District.
5.Accounts Officer (Operations), APSEB, Anantapur. …. RESPONDENTS

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

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ORDER:

This writ petition is filed seeking quashing of the proceedings of the 2nd respondent dated 21.03.1997 and also the proceedings of the 3rd respondent dated 01.07.1996.

The petitioner company incorporated under Companies Act has been established in the year 1993 for manufacture of cement at a remote place of Anantapur District at Bhogasamudram, Tadipatri Mandal. It has been availing electrical supply from respondent's Board for a contract load of 498 HP + 2024 KW + 1690 KVA and for CMD of 990 KVA under supply agreement. The Divisional Engineer, APSEB, Anantapur inspected the petitioner's factory premises and found that the meter seals and meter box seals were broken. Subsequently the 4th respondent issued provisional assessment notice dated 13.05.1996 estimating the value of the energy alleged to have been pilfered by the petitioner at

Rs.65,76,620/- and disconnected the power supply to the petitioner's unit. The petitioner filed his written objections before the 3rd respondent-Superintending Engineer. The 3rd respondent by order dated 17.09.1996 reduced the provisional assessment to Rs.18,89,668/- and directed the petitioner to pay the said amount less than the amount already paid under the demand of provisional assessment notice. Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent-Chief Engineer, who confirmed the orders of the 3rd respondent by order dated 21.03.1997 by revising the estimation of assessment of Rs.18,89,668/- to Rs.10,23,695/-. Hence this writ petition.

Having heard both the learned Counsel, this Court is of the view that this writ petition needs no consideration. The first contention of the learned Counsel for the petitioner is that even in the meter test report conducted on 11.05.1996, it is clearly stated that inside the meter at the meter terminal stud in 'R' phase in main circuit, the multi-strand lead is cut and also the main lead going from terminal block stud to the C.T. (50/10) is cut at the soldering point on the PCB due to the burning of particular lead on fault condition. Laying emphasis on the words "due to the burning of particular lead on fault condition", the said excess usage due to the said tampering the said pilferage of power might have occurred and it is not on account of the negligence or tampering by the petitioner. In fact, the primary authority has gone into this aspect and has given a finding that the APSEB Meter test report clearly indicates that the 'R' phase C.T. was tampered. Hence, this Court is of the view that the said contention put forth by the learned Counsel for the petitioner cannot be accepted.

So far as the second contention is concerned, according to the learned Counsel for the petitioner, though the load factor was originally assessed by the assessing authority at 0.9 but the same was reduced to 0.8 and the same is not inconsonance with the terms of the B.P.Ms.No.196 published in A.P. Gazette Notification dated 16.01.1993. In this context the learned Counsel for the petitioner has drawn my attention to Paragraph 9 of the said Gazette, wherein it is mentioned that o.7 load factor in case of Ferro Allays, Ferro Chrome, Caustic soda, cement, paper, Fertilizers, Hydrogen Paraxide. I am unable to appreciate the said contention for the reason that in the said G.O. it is clearly stated that the Electricity Board is constrained to introduce these restrictions and set out the procedure for the restrictions in these proceedings. Further the appellate authority having reassessed on a mathematical calculation has arrived at 0.8 and it cannot be said that it should be 0.7 as per the terms of the G.O. Further this Court is exercising its power of judicial review under Article 226 of the Constitution of India and the same is confined to the examination of the decision making process but not against the decision arrived at by the competent authority. If there is an error by the competent authority in arriving such a decision, this Court by its power under Article 226 of the Constitution can review the said order but not any other circumstances. In CHIEF CONSTABLE OF THE NORTH WALES POLICE V. EVANS[1], Lord Hailsham has explained the scope of judicial review as under:

> "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court."

Lord Brightman observed as under:

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made….

Having regard to the aforesaid authoritative pronouncements, this Court, in its writ jurisdiction, cannot interfere with the findings on fact given by the authorities with regard to the figures arrived at by them.

The writ petition is accordingly dismissed. No costs.

Learned Counsel for the petitioner brought to the notice of this Court that the amount arrived at by the appellate authority is Rs.10,23,695/-, whereas the petitioner paid an amount of Rs.10,96,054/- at the time when the power was restored to the unit. Having regard to the same, the differential amount paid by the petitioner shall be refunded if not already adjusted.

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(GOPALA KRISHNA TAMADA, J)

13-02-2007
Gsn.

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[1] (1982) 1 WLR 1155